



Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust  
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**ENVIRONMENTAL  
PROTECTION AGENCY**

**APR 21 2011**

**MONTANA OFFICE**

April 20, 2011

CERTIFIED MAIL 7009 0820 0000 6612 1257  
RETURN RECEIPT REQUESTED

Betsy Burns  
RCRA Project Officer  
EPA Region VIII  
Montana Office  
10 West 15th St., Suite 3200  
Helena, MT 59626

RE: Consent Decree Civil Action No. CV 98-3-H-CCL East Helena Site  
Work Performed in March 2011; Progress Report

Dear Betsy:

On May 5, 1998, ASARCO and the United States Environmental Protection Agency (EPA) entered into a Consent Decree (the Decree) to further the objectives of the Resource Conservation and Recovery Act (RCRA) and the Clean Water Act (CWA). On December 9, 2009, the Montana Environmental Custodial Trust (the Custodial Trust) was established as part of the larger ASARCO bankruptcy settlement agreement approved by the Bankruptcy Court (SD, Texas) and the US Federal District Court (SD, Texas). A Consent Decree and Settlement Agreement regarding Montana Sites (the Settlement Agreement) was entered into by ASARCO, US Department of Justice (DOJ), US Environmental Protection Agency (EPA), the State of Montana (the State) and the Montana Environmental Trust Group, LLC, not individually, but solely in its representative capacity as Trustee for the Montana Environmental Custodial Trust. The Settlement Agreement describes the role and responsibilities of the Custodial Trust, which include owning, managing, and overseeing the clean-up and revitalization of

ASARCO's property in East Helena, Montana (the Site). The United States and the State of Montana are the two designated beneficiaries of the Custodial Trust.

Pursuant to the Settlement Agreement, a motion to reopen the Decree and substitute the Custodial Trust for ASARCO was granted by the US Federal District Court in January 2010. As of the date of this report, EPA, DOJ and the Custodial Trust are in the process of finalizing a First Modification to the Decree that will conform to the terms of the Settlement Agreement. The Custodial Trust submits this progress report under the Decree subject to and pending the finalization of the First Modification to the Decree. Nothing herein, or in the substitution, should be interpreted or construed to constitute an unqualified acceptance of the terms of the Decree by the Custodial Trust or a waiver or release of its right to a modification of the Decree consistent with the Settlement Agreement. The Custodial Trust reserves all rights to object to those parts of the Decree that it reasonably believes are inconsistent with the Settlement Agreement. As with this report, future progress reports prescribed by the Decree, as so amended, will be submitted to EPA by the Custodial Trust.

Section XII of the Decree (Reporting: Corrective Action) requires submittal of certified monthly progress reports to EPA to describe the actions taken to achieve compliance with the Decree. The reports are to be submitted to EPA no later than the twentieth (20<sup>th</sup>) day of the subsequent month. The following describes those activities that have occurred or are related to activities that took place during March 2011. As to any actions performed by ASARCO, the Custodial Trust's predecessor-in-interest, the descriptions are based on information and belief only.

**SECTION 1. DESCRIPTION OF ACTIVITIES FOR MARCH 2011**

Activity	Performing Entity	Description	Data Submittal	Problems Encountered	Percent Complete
1. Phase II RFI	Hydrometrics/ GSI	Draft Phase II RFI field methods and data delivered to METG and GSI from Hydrometrics. GSI is now the primary author of the report, which is to be provided to METG in draft form on April	No data submitted	Hydrometrics delivery delay	30%
2. Field Sampling and Analysis Plan (FSAP)	METG	Pursuant to EPA's conditional letter of approval for the Phase II RFI Work Plan, a Field Sampling & Analysis Plan (FSAP) was required. The FSAP was written to include all site monitoring and Phase II activities. VOCs/SVOCs analysis has been added to a subset of site wells as a screening step where they have not been screened as contaminants of potential concern (COPC) in the past.	The FSAP is being revised to include EPA and MDEQ comments.	No problems encountered	90%
3. Baseline Ecological Risk Assessment (BERA)	Gradient	The Final BERA Work Plan and 2010 FSAP were completed by Gradient in August and submitted to the EPA by the Custodial Trust on 8/31/2010. Draft BERA report provided to EPA risk assessor in January 2011. EPA comments and discussion continued in March.	Gradient responses on comments from USFW and EPA on draft BERA provided to EPA/USFW. Met with EPA Risk Assessor on March 24 <sup>th</sup> to discuss the human health risk assessment work plan (Exponent, 2009) and Gradient's response to comments on the BERA. EPA risk assessor will respond to Gradient's comments and provide direction on the HHRA.	No problems encountered	90%
4. Consent Decree Modification	METG / DOJ	Modification #1 to the 1998 CD included METG comments to EPA for review. EPA submitted to MDOJ in February 2011.	Draft modification sent to MDOJ for review week of 02/28/2011	No problems encountered	80%

Activity	Performing Entity	Description	Data Submittal	Problems Encountered	Percent Complete
5. Consultant Selection	METG / EPA	CH2MHill consultant team (GSI Water Solutions, MMI, Pioneer Technical Services) selected for performance of Corrective Measures Study (CMS). Additional scope of work items include CAMU I evaluation and post-closure plan development, and field support for the April GW sampling event. The scope of the human health risk assessment will be delayed until comments are received on the 2009 work plan from the EPA's Risk Assessor.	Request for EPA approval of contractor selection	No problems encountered	100%
6. Health and Safety Plan	METG / Brox	The Master Health and Safety Plan for Contractors at the East Helena Facility has been revised.	Combined effort on the part of METG and Paul Brox, safety consultant	No problems encountered	100%
7. Water Treatment Plant	METG	The HDS water treatment plant operated for two days during the week of March 13.	DMR submitted to MDEQ and EPA in March 2011	No problems encountered	100%

Activity	Performing Entity	Description	Data Submittal	Problems Encountered	Percent Complete
8. Property Use / Development	1. Teck/H&H 2. American Chemet 3. Ashgrove Cement	1. Teck/H&H onsite in March to load slag material for final shipment of 19 railcars to Trail, BC. 2. American Chemet lease of warehouse space. Lease awaiting beneficiary approval. 3. Ashgrove loaded approximately 15,000 tons of slag the first week in March. Payment received in the amount of \$23,523.	American Chemet lease awaiting beneficiary approval.	No problems encountered	90%
9. Annual Compliance Reports	METG	Administrative Rules of Montana (ARM 17.53.603 requires any hazardous waste generated during calendar year 2010 to be reported by March 1 <sup>st</sup> of the subsequent year. Additionally, chemical inventory (Tier II) is required by Title III of the Superfund Amendments and Reauthorization Act of 1986, Section 312 for the purpose of providing State and local officials and the public with specific information on hazardous chemicals present at this facility.	Annual reports submitted in February 2011 to meet the March 1 <sup>st</sup> reporting deadline.	No problems encountered	100%

**Section 2. Activities Scheduled for April 2011**

<b>Task</b>	<b>Performing Entity</b>	<b>Description</b>
1. Monitoring Well Installation	Boland Drilling/ Environmental West	Environmental West installing 6 monitoring wells on Manlove Drive, Burnham property and Helena Sand & Gravel property areas beginning April 4 <sup>th</sup> .
2. Groundwater Technical Work Group	METG / GSI / CH2MHill	Groundwater Technical Group kick-off meeting scheduled for April 7 <sup>th</sup> , Helena, MT. The work group will include Burns, Breeden, Voss, Ford, Kirkpatrick, Stimson, Mullen (and modeler from Bureau of Mines), and GSI. The group meeting will include a discussion of the GW model parameters and the ongoing selenium investigation.
3. Field Sampling and Analysis Plan (FSAP)	Hydrometrics	Quarterly groundwater sampling of all monitoring wells (onsite & offsite), residential wells, public water supply and surface water to begin April 11 <sup>th</sup> .
4. Property Use/Development	Ashgrove Cement	Ashgrove to haul slag the week of April 18 <sup>th</sup> .
5. Monthly inspections of six temporary cap areas	T & S Consulting	Monthly inspections of the temporary cap areas will continue in April.

Task	Performing Entity	Description
6. Monthly inspection of CAMU Cell 1 and weekly inspections of CAMU Cell 2	T & S Consulting	Monthly inspections of the CAMU Cell 1 and weekly inspections of the CAMU Cell 2 will continue in April. The leachate and/or leak detection sumps did not require pumping in March.

### **Section 3. Describe and estimate the percentage of studies completed.**

The following projects or studies are 100% complete:

- Pump and treat pilot scale testing for source area reduction of groundwater contamination;
- Jar testing (Phase I) of the East Helena PRB materials testing program;
- Slurry wall construction in the former acid plant sediment drying area;
- Interim capping project for the following areas:
  - former acid plant sediment drying area
  - dross area
  - sinter plant area
  - gas cleaning and contact sections of the acid plant
  - thaw house
  - blast furnace baghouse
  - blast furnace flue
  - Monier flue
  - sample mill
  - crushing mill
  - hopper pad
  - storage bins and gallery
  - acid dust facility
  - sinter stocking building
  - highline railroad
  - abandoned and new breaking floor buildings
  - groundwater sump
  - sinter plant, acid plant, and blast furnace baghouse stacks.
- January 2008 CAMU Phase 2 Cell Design Analyses, CAMU Phase 2 cell construction, and placement of 2008 and 2009 wastes within the CAMU Phase 2 cell;
- Slurry wall construction in the former speiss-dross plant area;
- Historic recordation tasks associated with the 2008 and 2009 Cleaning and Demolition Work Plans;
- 2008 Interim Measures Work Plan Addendum, Blast Furnace Flue and Monier Flue Cleaning and Demolition and Demolition Footprint Exposed Areas Soil Sampling obligations;

- Submittal of the draft Baseline Ecological Risk Assessment Work Plan (June 2009) and Field Sampling and Analysis Plan (FSAP);
- Submittal of the draft Human Health Risk Assessment Work Plan (October 2009);
- Submittal of the draft Phase II RCRA Facility Investigation Site Characterization Work Plan (September 2009);
- Submittal of the final Phase II RCRA Facility Investigation Site Characterization Work Plan (May 2010);
- Submittal of the 2010 Post RI/FS Groundwater and Surface Water Sampling and Analysis Plan (May 2010);
- Submittal of the Phase II RCRA Facility Investigation Field Sampling and Analysis Plan (June 2010);
- Submittal of the Project Management Plan (June 2010); and
- Submittal of the Borehole Abandonment Plan (June 2010)

**Section 5. Describe actions being taken to address problems.**

There were no other actions required to address problems associated with the Decree.

**Section 6. Identify changes in key personnel during the period.**

There were no significant changes in key personnel during the period.

**Section 7. Describe the status of financial assurance mechanisms, including whether any changes have occurred, or are expected to occur which might affect them, and the status of efforts to bring such mechanisms back into compliance with the requirements of this Decree.**

The Custodial Trust received funds for Environmental Actions earmarked for site clean-up in connection with the ASARCO bankruptcy settlement. The Custodial Trust deposited the funds in a segregated East Helena Clean-up account and is investing and managing the funds in accordance with the provisions of the Settlement Agreement. Issues related to the CAMU trust are still being resolved between the beneficiaries and ASARCO.

Please do not hesitate to contact me if you have any questions.



Alicia C. Voss  
Lead Project Manager  
Montana Environmental Trust Group  
Trustee of the Montana Environmental Custodial Trust

#### Attachments

cc: Denise Kirkpatrick—MDEQ  
Randy Breeden—EPA 8  
Chuck Figur—EPA 8

CERTIFICATION  
PURSUANT TO U.S. v ASARCO INCORPORATED  
(CV-98-3-H-CCL, USDC, D. Montana)

"I certify under penalty of law that this document and all attachments, were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment for knowing violations."



Alicia C. Voss  
Lead Project Manager  
Montana Environmental Trust Group